



**E**nvironmental **Q**uality **B**oard

**MEMBER  
GUIDE**

**2015**

# **ENVIRONMENTAL QUALITY BOARD MEMBER GUIDE**

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## **I. OVERVIEW OF THE ENVIRONMENTAL QUALITY BOARD**

### **A. Statutory Authority and Responsibilities of the Environmental Quality Board**

The Environmental Quality Board (EQB) is a 20-member independent board that was established by Section 1920-A of The Administrative Code of 1929 (P.L. 177), as amended May 6, 1970 (Act No. 120). Section 1920-A identifies the specific responsibilities of the EQB as the following:

1. Develop a master environmental plan for the Commonwealth.
2. Formulate, adopt, and promulgate rules and regulations as necessary to accomplish the Department of Environmental Protection's (DEP) work.
3. Subpoena witnesses, records, and papers.
4. Review reports and advise the DEP on matters of policy.

In addition to the above responsibilities, the EQB also considers petitions for regulatory changes and has other responsibilities including the review of State Implementation Plan (Clean Air) changes, siting a low-level radioactive waste disposal facility, adopting a Hazardous Waste Facilities Plan, and considering applications for a certificate of public necessity for hazardous waste disposal facilities. Copies of previous plans adopted by the EQB including the Environmental Master Plan, the Infectious and Chemotherapeutic Waste Plan, and the Pennsylvania Hazardous Waste Facilities Plan are available upon request to DEP.

EQB members also play an important role in facilitating public comment on proposed regulation packages by presiding over any public hearings scheduled by the Board to receive testimony on a proposed rulemaking. In this capacity, an EQB member attends the public hearing and serves as the hearing chairperson. *(Please see Section IV. EQB Public Hearing Procedures)*

### **B. EQB Composition**

The Secretary of the Department of Environmental Protection serves as the Chairperson of the EQB. In addition to the Chairperson, the EQB includes the Secretaries of Health, Community and Economic Development, Transportation, Agriculture, and Labor and Industry; the Executive Directors of the Fish and Boat Commission, the Game Commission, the Historical and Museum Commission; and the State Planning Board; and the Chairman of the Public Utility Commission. In addition to these agency members, five Citizens Advisory Council (CAC) members serve on the EQB and are appointed annually by the CAC, as well as four General Assembly members who are selected each legislative session by the President Pro Tempore of the Senate, the Senate Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader. *(Please see Appendix A for a list of current EQB members and alternates, as well as DEP staff who assist the EQB).*

### **C. EQB Member Terms**

Terms for EQB members vary depending upon the individual's specific appointment. EQB members representing state agencies serve on the EQB for the duration of their agency appointment. House and Senate members serve at the pleasure of the legislative leaders, while CAC members are elected annually to serve on the EQB by members of the CAC.

## **II. EQB PUBLIC MEETING PROTOCOL AND PROCEDURES**

### **A. Public Meeting Procedures**

The EQB meets the third Tuesday of each month at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building (RCSOB), 400 Market Street, Harrisburg, Pennsylvania. Meetings that fall on Primary Election Days will be scheduled for the third Wednesday of the month. Notices of EQB meeting cancellations will be sent to all EQB members and alternates via e-mail, no later than two weeks prior to the meeting in question. EQB meetings are open to the public for informational purposes and are subject to the public notice provisions of the Sunshine Act.

The Board does not entertain comments and questions from the public at EQB meetings. An exception to this policy is provided in the Board's policy for processing petitions, whereby petitioners are given the opportunity to present their petitions to the Board at an EQB meeting (*please see Appendix H*). Also, various statutes may authorize the participation of advisory committees in discussions with the Board on regulations (i.e., the Storage Tank Advisory Committee and the Oil and Gas Technical Advisory Board). In addition, the Board may hold special meetings to be briefed by DEP on items of special interest. These special briefings are not public meetings subject to the Sunshine Act, because no action is taken by the Board at these sessions.

Eight members of the Board constitute a quorum, as provided by Article IV, Section 471 of the Administrative Code. The EQB follows Robert's Rules of Order in its proceedings. Official minutes of each public meeting are maintained. The previous month's meeting minutes are distributed to the Board members and are available electronically on DEP's website. Guidance for EQB members concerning the review of regulations is included in the "Protocol for Presentation of Regulations under the Regulatory Review Act," adopted and amended in 1984 and 1993 and 2009, respectively (*please see Appendix G*). This guidance provides procedural direction for EQB members pertaining to the review of regulations under the Regulatory Review Act.

The agenda for each EQB meeting is established two weeks prior to the date of the EQB public meeting. Meeting materials are distributed via electronic notification to all Board members two weeks prior to the meeting. At this time, items on the agenda are made available to the public upon request and are also posted electronically on DEP's website. Individuals may contact DEP for copies of regulations to be considered at the next scheduled EQB meeting. The first copy of regulations is free of charge. Additional copies are subject to the standard copying charge established by the Commonwealth.

### **B. Procedures for Designating Alternate Members**

Sections 471 and 213 of the Administrative Code of 1929, as amended, establish the requirements for naming alternates for EQB members. Procedures vary for Board members depending upon if the member is from an Administrative Agency or from the General Assembly or an Independent Agency.

## **1. Procedures for EQB Members from Administrative Agencies**

This section outlines the procedures available to EQB members from Administrative Agencies to name alternates. Administrative Agencies include the Departments of Agriculture, Community and Economic Development, Health, Labor and Industry, and Transportation. EQB members from Administrative Agencies are required to receive approval from the Governor in order to name a permanent or temporary alternate to the EQB.

DEP has developed a set of simple forms for EQB members from Administrative Agencies to request the Governor's approval for the designation of an alternate. Examples of those forms are included in the Appendices of this guide.

### **Instructions:**

Each Agency Secretary is required to send a memorandum to the Governor requesting permission to name a permanent alternate to the EQB. In addition to this memorandum, a draft letter on plain paper addressed to the Secretary of the Department of Environmental Protection, as Chairperson of the EQB, approving the selection of the permanent alternate for the respective Agency Secretary, must be included. The Governor's Office will prepare the finished letter from the draft provided and obtain the Governor's signature. The Governor's Office will then forward the letter to the Secretary of the Department of Environmental Protection as Chairperson of the EQB.

The request to designate an alternate must be sent to the Governor's Office with sufficient time to allow the Governor's Office to obtain the Governor's signature. **For the votes of alternates to be valid, the Administrative Code requires the actual approval from the Governor to be received by the Chairperson of the EQB prior to the start of the meeting at which the alternate is expected to represent the agency.**

DEP encourages the naming of senior level staff as permanent alternates on the EQB since it is likely that the schedule of an Agency's Secretary may periodically prohibit attendance at an EQB meeting. Each Agency Secretary has the option to name a temporary alternate to serve for one specific meeting; however, the approval letter from the Governor must be received prior to the start of the meeting at which the alternate is to represent the agency.

## **2. Procedures for EQB Members of the General Assembly and Independent Agencies**

This section outlines the procedures available to EQB members from the General Assembly and Independent Agencies to name alternates. Independent Agencies include the Fish and Boat Commission, Game Commission, Historical and Museum Commission, and the Public Utility Commission. Also covered by this procedure is the Governor's Policy Office.

DEP has developed a set of simple forms for EQB members from the General Assembly and Independent Agencies to designate alternates. Examples of those forms are included in the Appendices of this guide.

**Instructions:**

EQB members from the General Assembly and Independent Agencies may name an alternate of their choice. There are no limitations on naming alternates other than the alternate may not serve for more than one Board member at a time. A permanent alternate may be selected by a member as well as a temporary alternate to represent the member for a single meeting. DEP encourages EQB members to name senior level staff as permanent alternates on the Board, since it is likely that the schedules of General Assembly members or Executive Directors of Independent Agencies may periodically prohibit attendance at an EQB meeting.

To name an alternate, a short letter designating a permanent alternate or a temporary alternate should be addressed to the Secretary of the Department of Environmental Protection, as Chairperson of the EQB. **The Chairperson of the EQB must receive the letter prior to the start of the meeting at which the alternate is expected to represent the member.**

### **III. PUBLIC COMMENTS AND CORRESPONDENCE TO THE EQB**

As mentioned in Section II of this guide, EQB monthly meetings are open to the public for informational purposes. The Board may not entertain comments and questions from the public at these meetings; however, the Board can accept comments on a proposed rulemaking during the official public comment period, as well as after the public comment period, with certain limitations.

#### **A. Comments Received During the Public Comment Period**

Comments are accepted by the EQB on proposed rulemakings during the official public comment period, which begins with publication of the proposed rulemaking in the *Pennsylvania Bulletin*. The EQB can accept comments at public hearings that are authorized by the Board. All comments received at public hearings and in writing during the official public comment period are included in the official public comment record. These comments are addressed in DEP's comment and response document, which is submitted to the EQB as part of the final rulemaking. Comments received by DEP via facsimile are not accepted, as stated in the "public comments" section of all preambles of proposed rulemaking packages.

#### **B. Comments Received After the Public Comment Period**

Comments received by DEP after the close of the official public comment period are not included in the official public comment record and are not responded to in the comment and response document. Comments received by DEP on a final regulation, following the distribution of the final regulation to the EQB, are not submitted to the Board. However, interested parties may send comments directly to Board members following DEP's distribution of the final regulation to the Board. An EQB membership list, which includes mail and e-mail addresses of EQB members and alternates, is available on DEP's website.



#### **IV. EQB PUBLIC HEARING PROCEDURES**

The following procedures shall serve as a guide to an EQB member serving as a hearing chairperson for an EQB Public Hearing. The hearing chairperson retains the discretion to vary the procedures as appropriate for particular circumstances.

1. The hearing chairperson reads an opening statement that summarizes the proposal and outlines the hearing procedures.
2. The hearing chairperson introduces the witnesses who have pre-registered to testify.
3. Individuals present testimony. Individuals must state their name, address, and affiliation; three written copies of the testimony must be presented to the hearing officer to aid in transcribing the hearing. Members of the EQB or DEP staff may question witnesses; however, the witnesses may not question the EQB or DEP, as the purpose of a hearing is for the EQB to receive comments on a proposal.
4. After all pre-registered witnesses have testified, the hearing chairperson may allow other individuals an opportunity to present testimony as time allows.
5. The hearing chairperson adjourns the hearing after all pre-registered witnesses have been heard and after additional witnesses have testified as time allows.

# **APPENDICES**

**ENVIRONMENTAL QUALITY BOARD MEMBERS**

**Chairperson**

Honorable John Quigley, Chairperson  
Secretary of Environmental Protection  
16<sup>th</sup> Floor, Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101-2301  
[jquigley@pa.gov](mailto:jquigley@pa.gov)

**Members**

**Department of Health:**

Honorable Karen Murphy, PhD  
Secretary of Health  
Room 802, Health & Welfare Bldg.  
Harrisburg, PA 17120  
[karmurphy@pa.gov](mailto:karmurphy@pa.gov)

**Department of Community and Economic Development:**

Honorable Dennis Davin  
Secretary of Community &  
Economic Development  
400 North Street  
Keystone Building, Fourth Floor  
Harrisburg, PA 17120  
[ddavin@pa.gov](mailto:ddavin@pa.gov)

**Department of Transportation:**

Honorable Leslie Richards  
Secretary of Transportation  
Keystone Building, 8<sup>th</sup> Floor West  
Harrisburg, PA 17120  
[lrichards@pa.gov](mailto:lrichards@pa.gov)

**Department of Agriculture**

Honorable Russell Redding  
Secretary of Agriculture  
Room 211, Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110  
[rredding@pa.gov](mailto:rredding@pa.gov)

**Permanent Alternates**

Atmaram Nambiar  
Department of Health  
Health & Welfare Bldg.  
Harrisburg, PA 17120  
[anambiar@pa.gov](mailto:anambiar@pa.gov)

Paul Opiyo  
Department of Community &  
Economic Development  
400 North Street  
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[popiyo@pa.gov](mailto:popiyo@pa.gov)

Roger Cohen  
Department of Transportation  
8<sup>th</sup> Floor West  
Harrisburg, PA 17120-0095  
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Michael F. Smith  
Department of Agriculture  
Room 211, Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110  
[mfsmith@pa.gov](mailto:mfsmith@pa.gov)

## **Members**

### **Department of Labor and Industry:**

Honorable Kathy Manderino  
Secretary of Labor & Industry  
Room 1700, Labor & Industry Building  
7<sup>th</sup> & Forster Streets  
Harrisburg, PA 17120  
[kmanderino@pa.gov](mailto:kmanderino@pa.gov)

### **Pennsylvania Fish and Boat Commission:**

Honorable John Arway  
Executive Director  
PA Fish & Boat Commission  
1601 Elmerton Avenue  
P.O. Box 67000  
Harrisburg, PA 17106-7000  
[jarway@pa.gov](mailto:jarway@pa.gov)

### **Pennsylvania Game Commission:**

Honorable Matt Hough  
Executive Director  
PA Game Commission  
2001 Elmerton Avenue  
Harrisburg, PA 17110-9797  
[rhough@pa.gov](mailto:rhough@pa.gov)

### **Pennsylvania Utility Commission:**

Honorable Gladys Brown  
Chairman  
Public Utility Commission  
400 North Street  
Keystone Building, Third Floor  
Harrisburg, PA 17120  
[rfp@pa.gov](mailto:rfp@pa.gov)

### **Historical and Museum Commission:**

Honorable James M. Vaughan  
Executive Director  
Historical & Museum Commission  
Room 501, William Penn Memorial  
Museum Building  
330 North Street  
Harrisburg, PA 17120  
[jvaughan@pa.gov](mailto:jvaughan@pa.gov)

## **Permanent Alternates**

Eileen Cipriani  
Department of Labor & Industry  
Labor & Industry Building  
7<sup>th</sup> & Forster Streets  
Harrisburg, PA 17102  
[ecipriani@pa.gov](mailto:ecipriani@pa.gov)

Mark Hartle  
Pennsylvania Fish and Boat  
Commission  
450 Robinson Lane  
Bellefonte, PA 16823-9620  
[mhartle@pa.gov](mailto:mhartle@pa.gov)

Michael R. DiMatteo  
Chief, Division of Environmental  
Planning & Habitat Protection  
PA Game Commission  
2001 Elmerton Avenue  
Harrisburg, PA 17110-9797  
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Pamela A. Witmer  
Commissioner  
Public Utility Commission  
400 North Street  
Keystone Building  
Harrisburg, PA 17120  
[pwitmer@pa.gov](mailto:pwitmer@pa.gov)

Douglas McLearn  
Chief, Division of Archaeology &  
Protection  
Historical & Museum Commission  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120  
[dmclareen@pa.gov](mailto:dmclareen@pa.gov)

## **Members**

### **Governor's Office of Planning and Policy:**

Honorable John Hanger<sup>1</sup>  
Secretary  
Governor's Office of Planning and Policy  
Room 238, Main Capitol Building  
Harrisburg, PA 17120  
[jhanger@pa.gov](mailto:jhanger@pa.gov)

### **General Assembly:**

Honorable Gene Yaw  
Senate of Pennsylvania  
Chair, Senate Environmental  
Resources and Energy Committee  
Senate Post Office Box 203023  
Harrisburg, PA 17120-3023  
[gyaw@pasen.gov](mailto:gyaw@pasen.gov)

### **General Assembly:**

Honorable John T. Yudichak  
Senate of Pennsylvania  
Minority Chairman, Senate  
Environmental Resources and  
Energy Committee  
Senate Post Office Box 203014  
Harrisburg, PA 17120-3014  
[yudichak@pasenate.com](mailto:yudichak@pasenate.com)

### **General Assembly:**

Honorable John Maher  
Pennsylvania House of Representatives  
Chairman, House Environmental  
Resources and Energy Committee  
House Post Office Box 202093  
Harrisburg, PA 17120-2093  
[jmaher@pahousegop.com](mailto:jmaher@pahousegop.com)

## **Permanent Alternates**

Sam Robinson  
Senior Policy Analyst  
Governor's Office of Planning and  
Policy  
Room 601, Main Capitol Building  
Harrisburg, PA 17120  
[sdrobinson@pa.gov](mailto:sdrobinson@pa.gov)

Adam Pankake  
Senator Yaw's Office  
Senate Post Office Box 203023  
Harrisburg, PA 17120-3023  
[apankake@pasen.gov](mailto:apankake@pasen.gov)

Richard Fox  
Senator Yudichak's Office  
Senate Post Office Box 203014  
Harrisburg, PA 17120-3014  
[rfox@pasenate.com](mailto:rfox@pasenate.com)

Jonathan Lutz  
Representative Maher's Office  
House Post Office Box 202093  
Harrisburg, PA 17120-2093  
[jlutz@pahousegop.com](mailto:jlutz@pahousegop.com)

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<sup>1</sup> The Director of the Governor's Policy Office serves as Executive Director of the State Planning Board, which holds a seat on the EQB.

## **Members**

### **General Assembly:**

Honorable Greg Vitali  
House of Representatives  
Minority Chairman, House Environmental  
Resources and Energy Committee  
Room 38B, East Wing  
Main Capitol Building  
Harrisburg, PA 17120-2166  
[gvitali@pahouse.net](mailto:gvitali@pahouse.net)

### **Citizens Advisory Council:**

John Walliser, VP  
PA Environmental Council  
2124 Penn Avenue, 2<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
[jwalliser@pecpa.org](mailto:jwalliser@pecpa.org)

### **Citizens Advisory Council:**

Burt Waite  
Moody and Associates  
11548 Cotton Road  
Meadville, PA 16314  
[bwaite@moody-s.com](mailto:bwaite@moody-s.com)

### **Citizens Advisory Council:**

Ms. Cynthia Carrow  
Western Pennsylvania Conservancy  
800 Waterfront Drive  
Pittsburgh, PA 15222  
[ccarrow@paconserve.org](mailto:ccarrow@paconserve.org)

### **Citizens Advisory Council:**

William C. Fink  
5714 Raystown Road  
Hopewell, PA 16650  
[wfink@cvff.com.com](mailto:wfink@cvff.com.com)

### **Citizens Advisory Council:**

Donald Welsh  
[donaldswelsh@gmail.com](mailto:donaldswelsh@gmail.com)

## **Permanent Alternates**

TBD  
Representative Vitali's Office  
Room 38B, East Wing  
Main Capitol Building  
Harrisburg, PA 17120-2166

Terry Dayton  
c/o PA Land Holdings Co.  
PO Box 1020  
158 Portal Road  
Waynesburg, PA 15370  
[tdayton@windstream.net](mailto:tdayton@windstream.net)

Jim Sandoe  
[cjsandoe@yahoo.com](mailto:cjsandoe@yahoo.com)

**DEP Staff:**

Patrick McDonnell  
Director, Policy Office

Hayley Book  
Deputy Director, Policy Office

Kim Childe  
Board Counsel

Laura Edinger  
Regulatory Coordinator

Jennifer Swan  
Administrative Support

**Environmental Quality Board Contact Information:**

Environmental Quality Board  
16th Floor, RCSOB  
P.O. Box 8477  
Harrisburg, PA 17105-8477  
(717) 787-4526  
[RA-EPEQB@pa.gov](mailto:RA-EPEQB@pa.gov)

**DRAFT MEMO FOR DESIGNATING PERMANENT ALTERNATES FOR  
ADMINISTRATIVE AGENCIES**

**SUBJECT:** Designating Environmental Quality Board Alternate

**TO:** The Honorable \_\_\_\_\_  
Governor

**FROM:** (Member Designating Alternate)

I am requesting that \_\_\_\_\_ (name, title) \_\_\_\_\_ be named as my permanent alternate to the Environmental Quality Board (EQB).

\_\_\_\_\_ (name) \_\_\_\_\_ will represent me on this Board and have voting and other privileges of a member of the Board in accordance with Sections 471 and 213 of the Administrative Code, as amended.

Attached is a draft letter for your consideration to Secretary \_\_\_\_\_, as Chairperson of the EQB, which indicates your approval of this request. Your letter approving the alternate should be received by Secretary \_\_\_\_\_ prior to the \_\_\_\_\_ (date of meeting) EQB meeting.

Attachment



**DRAFT LETTER FOR THE GOVERNOR'S APPROVAL OF PERMANENT  
EQB ALTERNATE FOR ADMINISTRATIVE AGENCIES**

The Honorable \_\_\_\_\_  
Chairperson  
Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Dear Chairperson \_\_\_\_\_:

By this letter I am approving \_\_\_\_\_ (name, title, agency) \_\_\_\_\_ as an alternate for  
\_\_\_\_\_ (member) \_\_\_\_\_ on the Environmental Quality Board.

\_\_\_\_\_ (Name) \_\_\_\_\_ will have voting and other privileges of a member of the  
Board in accordance with Sections 471 and 213 of the Administrative Code, as amended.

Unless otherwise noted at a later date, this is a permanent alternate designation.

Sincerely,

\_\_\_\_\_  
Governor

**DRAFT MEMO FOR DESIGNATING TEMPORARY ALTERNATES  
FOR ADMINISTRATIVE AGENCIES**

**SUBJECT:** Designating Environmental Quality Board Alternate

**TO:** The Honorable \_\_\_\_\_  
Governor

**FROM:** (Member Designating Alternate)

I am requesting that \_\_\_\_\_ (name, title) \_\_\_\_\_ be named as my alternate to the Environmental Quality Board (EQB) at its meeting of \_\_\_\_\_ (date) \_\_\_\_\_ .

\_\_\_\_\_ (Name) \_\_\_\_\_ will represent me on this Board and have voting and other privileges of a member of the Board in accordance with Sections 471 and 213 of the Administrative Code, as amended.

Attached is a draft letter for your consideration to Secretary \_\_\_\_\_ as Chairperson of the EQB, which indicates your approval of this request. Your letter approving the alternate should be received by Secretary \_\_\_\_\_ prior to the \_\_\_\_\_ (date of meeting) EQB meeting.

Attachment

**DRAFT LETTER FOR THE GOVERNOR'S APPROVAL  
OF TEMPORARY EQB ALTERNATES FOR ADMINISTRATIVE AGENCIES**

The Honorable \_\_\_\_\_  
Chairperson  
Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Dear Chairperson \_\_\_\_\_:

By this letter I am approving \_\_\_\_\_ (name, title, agency) \_\_\_\_\_ as an alternate  
for \_\_\_\_\_ (member) \_\_\_\_\_ to the Environmental Quality Board at its meeting to be held  
on \_\_\_\_\_ (date) \_\_\_\_\_.

At this meeting, \_\_\_\_\_ (name) \_\_\_\_\_ will have voting and other privileges of a  
member of the Board in accordance with Sections 471 and 213 of the Administrative Code, as  
amended.

Sincerely,

\_\_\_\_\_  
Governor

**APPENDIX D**

**DRAFT LETTER FOR DESIGNATING A PERMANENT ALTERNATE FOR  
MEMBERS OF THE GENERAL ASSEMBLY AND INDEPENDENT AGENCIES**

The Honorable \_\_\_\_\_  
Chairperson  
Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Dear Chairperson \_\_\_\_\_:

By this letter I am designating \_\_\_\_\_ (name) \_\_\_\_\_ to serve as my alternate on the Environmental Quality Board.

\_\_\_\_\_ (Name) \_\_\_\_\_ will represent me on the Board and have voting and other privileges of a Board member in accordance with Section 471 of the Administrative Code, as amended. Unless otherwise noted at a later date, this is a permanent alternate designation.

Sincerely,

(Board Member making  
the designation)

**APPENDIX E**

**DRAFT LETTER FOR DESIGNATING A TEMPORARY ALTERNATE FOR  
MEMBERS OF THE GENERAL ASSEMBLY AND INDEPENDENT AGENCIES**

The Honorable \_\_\_\_\_  
Chairperson  
Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Dear Chairperson \_\_\_\_\_:

By this letter I am approving \_\_\_\_\_ (name, title, agency) \_\_\_\_\_ as an alternate  
for \_\_\_\_\_ (member) \_\_\_\_\_ to the Environmental Quality Board at its meeting to be held  
on \_\_\_\_\_ (date) \_\_\_\_\_.

At this meeting, \_\_\_\_\_ (name) \_\_\_\_\_ will have voting and other privileges of a  
member of the Board in accordance with Section 471 of the Administrative Code, as amended.

Sincerely,

(Board Member making  
the designation)

**REGULATORY REVIEW ACT**

(Reenacted and amended June 30, 1989, P.L.73, No.19)

AN ACT

Providing for independent oversight and review of regulations, creating an Independent Regulatory Review Commission, providing for its powers and duties and making repeals.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the "Regulatory Review Act."

Section 2. Legislative intent.

(a) The General Assembly has enacted a large number of statutes and has conferred on boards, commissions, departments and agencies within the executive branch of government the authority to adopt rules and regulations to implement those statutes. The General Assembly has found that this delegation of its authority has resulted in regulations being promulgated without undergoing effective review concerning cost benefits, duplication, inflationary impact and conformity to legislative intent. The General Assembly finds that it must establish a procedure for oversight and review of regulations adopted pursuant to this delegation of legislative power in order to curtail excessive regulation and to require the executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania. It is the intent of this act to establish a method for ongoing and effective legislative review and oversight in order to foster executive branch accountability; to provide for primary review by a commission with sufficient authority, expertise, independence and time to perform that function; to provide ultimate review of regulations by the General Assembly; and to assist the Governor, the Attorney General and the General Assembly in their supervisory and oversight functions. To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency.

(b) ((b) deleted by amendment)

(c) This act is intended to improve State rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses in accordance with the following findings:

- (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.
- (2) Small businesses bear a disproportionate share of regulatory costs and burdens.
- (3) Fundamental changes that are needed in the regulatory and enforcement culture of agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies.
- (4) When adopting regulations to protect the health, safety and economic welfare of the Commonwealth, agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small business.

(5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting and consulting costs upon small businesses with limited resources.

(6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation and restrict improvements in productivity.

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes.

(8) The practice of treating all regulated businesses similarly may lead to inefficient use of regulatory agency resources, enforcement problems and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation.

(9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses.

(10) The process by which State regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses and to review the continued need for existing rules.

(d) This act is not intended to create a right or benefit, substantive or procedural, enforceable at law by a person against another person or against the Commonwealth, its agencies or its officers.

(2 amended June 29, 2012, P.L.657, No.76)

### Section 3. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Acceptable data." Empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research. (Def. added July 7, 2011, P.L.277, No.60)

"Agency." Any department, departmental administrative board or commission, independent board or commission, agency or other authority of this Commonwealth now existing or hereafter created, but shall not include the Senate or the House of Representatives, the Pennsylvania Fish Commission, the Pennsylvania Game Commission or any court, political subdivision, municipal or local authority.

"Commission." The Independent Regulatory Review Commission.



"Committee." A standing committee of the Senate or the House of Representatives designated by the President pro tempore of the Senate for the Senate or by the Speaker of the House of Representatives for the House. The designation shall prescribe the jurisdiction of each standing committee over the various State agencies for purposes of this act. The designation shall be transmitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

"Commonwealth Attorneys Act." The act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act."

"Commonwealth Documents Law." The act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

"Designated standing committee." (Def. deleted by amendment).

"Family." A parent, spouse, child, brother or sister.

"Final-form regulation." A regulation previously published as a proposed regulation pursuant to the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, which an agency submits to the commission and the committees following the close of the public comment period.

"Final-omitted regulation." A regulation which an agency submits to the commission and the committees for which the agency has omitted notice of proposed rulemaking pursuant to section 204 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

"Promulgate." To publish an order adopting a final-form or final-omitted regulation in accordance with the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

"Proposed regulation." A document intended for promulgation as a regulation which an agency submits to the commission and the committees and for which the agency gives notice of proposed rulemaking and holds a public comment period pursuant to the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

"Regulation." Any rule or regulation, or order in the nature of a rule or regulation, promulgated by an agency under statutory authority in the administration of any statute administered by or relating to the agency or amending, revising or otherwise altering the terms and provisions of an existing regulation, or prescribing the practice or procedure before such agency. The term shall also include actions of the Liquor Control Board which have an effect on the discount rate for retail licensees. The term shall not include a proclamation, executive order, directive or similar document issued by the Governor, but shall include a regulation which may be promulgated by an agency, only with the approval of the Governor.

"Small business." As defined in accordance with the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1

Part 121 (relating to Small Business Size Regulations) or its successor regulation. (Def. added June 29, 2012, P.L.657, No.76)

"Withdrawal." Removal of a proposed, final-form or final-omitted regulation by an agency from the review process so that the commission and the committees are prevented from taking further action on the regulation.

(3 amended June 25, 1997, P.L.252, No.24)

**Compiler's Note:** The name of the Pennsylvania Fish Commission, referred to in this section, was changed to the Pennsylvania Fish and Boat Commission by the Act 39 of 1991. See 30 Pa.C.S. § 308 (relating to designation of commission).

Section 4. Composition of commission; membership, compensation; vacancies; removal.

(a) The Independent Regulatory Review Commission shall consist of five members to be known as commissioners. One commissioner shall be appointed by the Governor to serve at the Governor's pleasure, one by the President pro tempore of the Senate, one by the Speaker of the House of Representatives, one by the Minority Leader of the Senate and one by the Minority Leader of the House of Representatives. A member of the General Assembly or any other officer or employee of State Government may not serve as a commissioner; but a commissioner may serve on advisory boards and commissions, or on other boards and commissions which do not promulgate any rules and regulations which may come before the commission for review pursuant to this act.

(b) Each appointment provided for by subsection (a), except for the Governor's appointment, shall be for a term of three years. ((b) amended Dec. 6, 2002, P.L.1227, No.148)

(c) An appointment to fill a vacancy for the remainder of the unexpired term shall be made in the same manner as set forth in subsection (a). Upon the expiration of a commissioner's term of office, the commissioner shall continue to hold office until a successor is appointed.

(d) The commissioner who is elected to serve as the chairperson in accordance with subsection (g) shall receive \$300 per day as compensation for services rendered to the commission. Each of the other commissioners shall receive \$250 per day as compensation for services rendered to the commission. A commissioner shall also be entitled to reimbursement for travel and other necessary expenses incurred as a result of official duties. The expenses incurred by a commissioner, or by an employee of the commission, shall be paid on the presentation of itemized vouchers therefor, which vouchers shall be subject to the approval of the commission.

(e) Except as authorized pursuant to subsection (f) or (h) and except for the Governor's appointee who shall serve at the Governor's pleasure, a commissioner may not be removed during the commissioner's term of office. The Governor may, with the approval of two-thirds of the members of the Senate, upon clear and convincing evidence of misfeasance or malfeasance in office or neglect of duty, remove a commissioner prior to the expiration of the commissioner's

term. The Governor shall provide the commissioner to be removed with a detailed written statement of the reasons for removal.

(f) A commissioner formally charged before a court of record with the commission of a felony or with a misdemeanor as provided by 18 Pa.C.S. Pt. II Art. E (relating to offenses against public administration) shall immediately be suspended as a commissioner until the charge is dismissed or a verdict of acquittal is announced. If a commissioner pleads guilty or nolo contendere or is found guilty of such offense, or receives probation without verdict, disposition in lieu of trial or an accelerated rehabilitative disposition for felony or misdemeanor charges in this Commonwealth or in any other jurisdiction, that commissioner shall immediately be removed from the commission upon announcement of the verdict or disposition by the court or upon the court's acceptance of a plea of guilty or nolo contendere.

(f.1) A commissioner may not participate in deliberations regarding any regulation which significantly affects the operation or activities of any organization (except a nonprofit organization certified under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) in which the commissioner holds a nonsalaried position) in which the commissioner, or any member of the commissioner's family, owns shares of stock in excess of 5% of the total issue of the stock, has an ownership interest in excess of 5% of the total ownership or serves as an officer, director, trustee, partner or employee. Within 90 days of appointment, and annually thereafter, each commissioner shall disclose all business affiliations and financial interests. The disclosure statement shall be filed with the executive director of the commission and the Ethics Commission and shall be available for public inspection during business hours of the commission. Each commissioner's disclosure statement shall remain on file as long as the commissioner remains on the commission. If a commissioner has or may have a conflict of interest or feels another commissioner has or may have a conflict of interest in deliberating on a regulation, the commissioner shall, prior to the vote on the regulation, disclose the conflict or potential conflict. The commissioner may request a ruling from the chairperson of the commission upon the question of whether the conflict or potential conflict disqualifies the commissioner from voting on the regulation. A commissioner may challenge the ruling of the chairperson, and, in that case, the question shall be resolved by majority vote of the commission. The chairperson or a majority of the commissioners may request the Ethics Commission to provide advice regarding conflicts of interest, and the advice, when given, shall be binding upon the commission. A commissioner commits a misdemeanor of the second degree by knowingly and intentionally violating the provisions of this subsection. The commission or its employees when acting in good faith on an opinion issued to a commissioner by the chairperson or the Ethics Commission shall not be subject to criminal or civil penalties levied under the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law, for so acting, provided the material facts are as stated in the request for an opinion. In addition to the requirements of this act, a commissioner is subject to the Public Official and Employee Ethics Law.

(g) The commission shall elect a chairperson, who shall serve for a term of two years and until a successor is elected. The chairperson shall preside at meetings of the commission and shall execute documents relating to the formal actions of the commission.

(h) The commission shall meet before the period for its review of regulations under this act expires and at other times as necessary to transact the business of the commission and insure an expeditious and orderly review of regulations under this act. Meetings shall be held at times and places set by the chairperson. A meeting may be scheduled by the commission upon the provision of at least ten days' notice to all affected agencies and the committees. A commissioner who does not attend three consecutive meetings without cause may be removed as a commissioner by the authority appointing the commissioner. ((h) amended Dec. 6, 2002, P.L.1227, No.148)

(i) For purposes of conducting official business, a quorum consists of three commissioners. A commissioner must be physically present to be counted toward the quorum. If the commission is unable to conduct business for lack of a quorum, the deadline for the commission to take action on a regulation in accordance with this act shall be postponed for 30 days or until the next meeting at which a quorum is in attendance, whichever first occurs.

(4 amended June 25, 1997, P.L.252, No.24)

Section 5. Proposed regulations; procedures for review.

(a) On the same date that an agency submits a proposed regulation to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the Pennsylvania Bulletin as required by the Commonwealth Documents Law, the agency shall submit to the commission and the committees a copy of the proposed regulation and a regulatory analysis form which includes the following:

(1) The title of the agency and the names, office addresses and telephone numbers of the agency officials responsible for responding to questions regarding the regulation or for receiving comments relating to the regulation.

(1.1) A specific citation to the Federal or State statutory or regulatory authority or the decision of a Federal or State court under which the agency is proposing the regulation, which the regulation is designed to implement or which may mandate or affect compliance with the regulation.

(2) A concise and, when possible, nontechnical explanation of the proposed regulation.

(3) A statement of the need for the regulation.

(4) Estimates of the direct and indirect costs to the Commonwealth, to its political subdivisions and to the private sector. Insofar as the proposed regulation relates to costs to the Commonwealth, the agency may submit in lieu of its own statement the fiscal note prepared by the Office of the Budget pursuant to section 612 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

(5) A statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be

required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

(7) A schedule for review of the proposed regulation, including the date by which the agency must receive comments; the date or dates on which public hearings will be held; the expected date of promulgation of the proposed regulation as a final-form regulation; the expected effective date of the final-form regulation; the date by which compliance with the final-form regulation will be required; and the date by which required permits, licenses or other approvals must be obtained.

(8) ((8) deleted by amendment June 25, 1997, P.L.252, No.24)

(9) An identification of the types of persons, small businesses, businesses and organizations which would be affected by the regulation.

(10) An identification of the financial, economic and social impact of the regulation on individuals, small businesses, business and labor communities and other public and private organizations and, when practicable, an evaluation of the benefits expected as a result of the regulation.

(10.1) For any proposed regulation that may have an adverse impact on small businesses, an economic impact statement that includes the following:

(i) An identification and estimate of the number of the small businesses subject to the proposed regulation.

(ii) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

(iii) A statement of the probable effect on impacted small businesses.

(iv) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(11) A description of any special provisions which have been developed to meet the particular needs of affected groups and persons, including minorities, the elderly, small businesses and farmers.

(12) A description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

(12.1) A regulatory flexibility analysis in which the agency shall, where consistent with health, safety, environmental and economic welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing

adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

- (i) the establishment of less stringent compliance or reporting requirements for small businesses;
- (ii) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (iii) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (iv) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
- (v) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(13) A description of the plan developed for evaluating the continuing effectiveness of the regulation after its implementation.

(14) A description of any data upon which a regulation is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data shall have the burden of proving that the data is acceptable.

((a) amended June 29, 2012, P.L.657, No.76)

(b) The requirements of subsection (a) shall not diminish the requirements of section 201 of the Commonwealth Documents Law, but the information required by this section may be included in the Notice of Proposed Rulemaking published in the Pennsylvania Bulletin in lieu of the information required by paragraphs (2) and (3) of section 201 of the Commonwealth Documents Law. The agency shall hold a public comment period which shall commence with the publication of the notice of proposed rulemaking and shall continue for not less than 30 days unless section 203(1) or (2) of the Commonwealth Documents Law applies.

(c) From the date of submission of the proposed regulation, the agency shall submit to the commission and the committees, within five business days of receipt, a copy of comments which the agency receives relating to the proposed regulation. The agency shall also, upon request, submit to the commission and the committees copies of reports from advisory groups and other documents received from or disseminated to the public relating to the proposed regulation and public notices or announcements relating to solicitation of public comments or meetings which the agency held or will hold relating to the proposed regulation.

(d) The committees may, at any time prior to the submittal of the regulation in final-form, convey to the agency and the commission their comments, recommendations and objections to the proposed regulation and a copy of any staff reports deemed pertinent. The comments, recommendations and objections may refer to the criteria in section 5.2.

(e) ((e) deleted by amendment)

(f) An agency may not submit a proposed regulation to the committees for review during the period from the end of the legislative session in an even-numbered year to the date by which both committees have been designated in the next succeeding legislative session, but an agency may submit a proposed regulation and the material required under subsection (a) to the commission and the Legislative Reference Bureau during this period in accordance with subsection (a). The public comment period shall commence with the publication of the notice of proposed rulemaking and end on the date designated by the agency under subsection (b). The agency shall submit the proposed regulation and required material to the committees no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the agency does not deliver the proposed regulation and all material required under this section in the time prescribed in this subsection, the agency shall be deemed to have withdrawn the proposed regulation.

(g) The commission may, within thirty days after the close of the public comment period, convey to the agency and committees any comments, recommendations and objections to the proposed regulation. The comments, recommendations and objections shall specify the regulatory review criterion set forth in section 5.2 which the proposed regulation has not met. If the commission does not comment on, make recommendations regarding or object to any portion of the proposed regulation within the time provided in this subsection, the commission shall be deemed to have approved that portion of the proposed regulation. Disapproval of the final-form regulation by the commission shall relate only to comments, recommendations and objections raised by the commission to the proposed regulation; to changes which the agency made to the proposed regulation; or to recommendations, comments or objections which a committee conveyed to the agency or the commission.

(h) The commission shall provide comments to the agency if the required submissions under subsection (a)(9), (10), (10.1) and (12.1) demonstrate an adverse impact on small businesses. ((h) added June 29, 2012, P.L.657, No.76)

(5 amended Dec. 6, 2002, P.L.1227, No.148)

**Compiler's Note:** Section 5 of Act 76 of 2012, which amended subsec. (a) and added subsec. (h), provided that Act 76 shall apply to regulations submitted on or after the effective date of Act 76 to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the Pennsylvania Bulletin as required by the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

**Compiler's Note:** Section 5 of Act 148 of 2002, which amended section 5, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits

on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

#### Section 5.1. Final-form regulations and final-omitted regulations; procedures for review.

(a) The agency shall review and consider public comments and the comments of the committees and commission pursuant to this section. Within five business days of receipt of a public comment, the agency shall notify the commentator of the agency's address and telephone number where the commentator may submit a request for the information concerning the final-form regulation under subsection (b). Upon completion of the agency's review of comments, the agency shall submit to the commission and the committees a copy of its response to the comments received, the names and addresses of commentators who have requested additional information relating to the final-form regulation and the text of the final-form regulation which the agency intends to adopt. If an agency does not submit or withdraws and does not resubmit the final-form regulation within two years of the close of the public comment period but still desires to promulgate the final-form regulation, the agency shall republish the regulation as a proposed regulation with a new public comment period in accordance with the Commonwealth Documents Law. If the agency is prevented from delivering its final-form regulation to the commission and the committees within the time period provided for in this subsection because of the adjournment sine die or expiration of the legislative session in an even-numbered year, the agency shall deliver its final-form regulation in accordance with subsection (f).

(b) On the same date that the agency submits the material required in subsection (a) to the commission and the committees, the agency shall send a notice of submission and a copy of the text of the final-form regulation or a copy of all changes to the proposed regulation which are incorporated into the final-form regulation to each commentator who requested this information pursuant to subsection (a). The agency is not responsible for notifying each party whose name appears on petitions or membership lists who did not present individual comments on the regulation.

(c) The agency shall submit final-omitted regulations to the commission and the committees for review under this section on the same date that the agency submits the regulations to the Attorney General for review as provided in section 204(b) of the Commonwealth Attorneys Act. The requirements of section 5, except for the requirements for holding a public comment period and for notifying commentators, are applicable to final-omitted regulations. If the agency makes revisions pursuant to subsection (g), the agency shall deliver copies of the revisions to the Attorney General on the same date that the agency delivers the revisions to the commission and the committees.

(d) ((d) deleted by amendment)

(e) The commission may have until its next scheduled meeting which occurs no less than 30 days after receipt of the final-form or final-omitted regulation to approve or disapprove the final-form or final-omitted regulation. The commission shall notify the agency and the committees of its approval or disapproval. If the commission does not disapprove the final-form or final-omitted



regulation within the time allotted in this subsection, the commission shall be deemed to have approved the final-form or final-omitted regulation.

(f) An agency may not deliver a final-form or final-omitted regulation to the commission and the committees after the adjournment sine die or expiration of the legislative session in an even-numbered year. The agency may not deliver the final-form or final-omitted regulation until the fourth Monday in January of the next year. On that date, the agency shall resubmit the final-form or final-omitted regulation and required material to the committees and the commission. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the final-form or final-omitted regulation and required material to the committees and the commission until both committees are designated.

(g) Except as provided in this subsection, the agency may not make any changes to a final-form or final-omitted regulation after the agency submits the final-form or final-omitted regulation to the commission and the committees.

(1) Prior to the expiration of the date on which either of the committees takes action on the final-form or final-omitted regulation, pursuant to subsection (j.2) or (j.3) or the expiration of the commission's review period prescribed in subsection (e), whichever occurs first, the agency may, unless the commission shall object, toll the time for the commission's and the committees' review of the final-form or final-omitted regulation in order to allow time for the agency to consider revisions to the final-form or final-omitted regulation recommended by the commission or a committee.

(2) Tolling under paragraph (1) may last for up to 30 days. If within 30 days the agency does not submit revisions to the committees and the commission or does not notify the commission and the committees in writing that it will not submit revisions but wishes the commission and the committees to resume their review, the agency shall be deemed to have withdrawn the final-form or final-omitted regulation.

(3) The committees shall have the remainder of the 20-day review period or ten days from the date of receipt of the revised final-form or final-omitted regulation or written notification under paragraph (2), whichever is longer, to take action pursuant to subsection (j.2) or (j.3), and the commission may have until its next scheduled meeting which occurs after the expiration of the committee review period but not less than 15 days after receipt of the revised final-form or final-omitted regulation or written notification under paragraph (2) to review the final-form or final-omitted regulation. If the commission does not disapprove the final-form or final-omitted regulation or a committee does not notify the commission and the agency that it has disapproved the regulation or that it intends to review the regulation pursuant to subsection (j.2), within the respective time periods, the regulation shall be deemed approved.

(4) The agency may not toll the time for review of any final-form or final-omitted regulation more than one time.

(5) The agency may not submit revisions or notification that the regulation will not be revised after the adjournment sine die or the expiration of the legislative session in an even-numbered year. If the committees and the commission are prevented from completing their review pursuant to this subsection because of the adjournment sine die or the expiration of the legislative session in an even-numbered year, the agency shall resubmit the final-form or final-omitted regulation and review shall proceed in accordance within subsection (j.3).

(h) ((h) deleted by amendment)

(i) ((i) deleted by amendment)

(j) The commission shall accept public comments only up to 48 hours prior to the commission's public meeting unless the comments are submitted at the request of the commission. The commission shall receive comments from the agency or members of the General Assembly until the commission acts on the regulation. The commission shall transmit comments received during the 48-hour period prior to the commission's public meeting to the agency and the committees upon receipt. The commission shall accept additional public comments only after the public meeting has been called to order.

(j.1) A committee shall have at least 20 days from receipt of the information required under subsection (a) or receipt of the information required under subsection (c) to take action pursuant to subsection (j.2). If the committees are prevented from completing their 20-day review because of the adjournment sine die or expiration of the legislative session in an even-numbered year, their review of the final-form or final-omitted regulation shall automatically be suspended until the fourth Monday in January of the next year. On that date, the agency shall resubmit the final-form or final-omitted regulation and required material to the committees and the commission. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the final-form or final-omitted regulation and required material to the commission and the committees until both committees have been designated. If the agency does not deliver the final-form or final-omitted regulation and required material to the commission and the committees by the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin, the agency shall be deemed to have withdrawn the regulation. In computing the remaining time for committee review, the number of days in which the committees have had the final-form or the final-omitted regulation under review as of the adjournment sine die or expiration of the prior session shall be subtracted from the 20-day committee review period, but the committee review period in the next succeeding legislative session shall not be less than ten days. The commission shall not act on a regulation until the committee review period has expired. This section shall not apply to emergency-certified regulations adopted pursuant to the provisions of section 6(d).

(j.2) At any time during the commission's review period up to 24 hours prior to the opening of the commission's public meeting, a committee may notify the commission and the agency that it has approved or disapproved a final-form or final-omitted regulation or that it intends to review the regulation. If the commission approves a regulation and a committee has not notified the commission and the agency that it has disapproved the regulation or that it intends to review the

regulation, the agency may promulgate the regulation. If the commission approves a regulation and a committee has notified the commission and the agency that it has disapproved the regulation or that it intends to review the regulation, the agency may not promulgate the regulation for 14 days after the committee has received the commission's approval order. During this 14-day period, the committee may take action on the regulation pursuant to section 7(d). If at the expiration of the 14-day period the committee has not taken action on the regulation pursuant to section 7(d), the agency may promulgate the regulation.

(j.3) If the committees are prevented from completing their 14-day review because of adjournment sine die or expiration of the legislative session in an even-numbered year, their review of the final-form or final-omitted regulation shall automatically be suspended until the fourth Monday in January of the next year. On that date, the agency shall resubmit the final-form or final-omitted regulation and required material to the committees and the commission. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the final-form or final-omitted regulation and required material to the committees and the commission until both committees are designated. If the agency does not deliver the final-form or final-omitted regulation and required material to the commission and the committees by the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin, the agency shall be deemed to have withdrawn the final-form or final-omitted regulation. In determining the remaining time for committee review, the number of days in which the committees have had the final-form or the final-omitted regulation under review as of the adjournment sine die or expiration of the prior session shall be subtracted from the 14-day committee review period, but the committee review period in the next succeeding legislative session shall not be less than ten days. An agency may not submit a final-form or final-omitted regulation to the commission or the committees for review during the period from the adjournment sine die or expiration of the legislative session of an even-numbered year to the date by which both committees have been designated in the next succeeding legislative session. This subsection shall not apply to emergency-certified regulations adopted pursuant to the provisions of section 6(d).

(j.4) If the commission disapproves a final-form or final-omitted regulation, the commission, the committees and the agency will proceed in accordance with section 6.

(k) The commission shall note and shall make a part of the public record all comments which it receives relating to a regulation and shall retain the comments for four years after the promulgation of the regulation.

(l) Except for emergency-certified regulations adopted under section 6(d), an agency may not promulgate a regulation until completion of the review provided for in this act.

(5.1 amended Dec. 6, 2002, P.L.1227, No.148)

**Compiler's Note:** Section 5 of Act 148 of 2002, which amended section 5.1, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

## Section 5.2. Criteria for review of regulations.

(a) In determining whether a proposed, final-form, final-omitted or existing regulation is in the public interest, the commission shall, first and foremost, determine whether the agency has the statutory authority to promulgate the regulation and whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based. In making its determination, the commission shall consider written comments submitted by the committees and current members of the General Assembly, pertinent opinions of Pennsylvania's courts and formal opinions of the Attorney General.

(b) Upon a finding that the regulation is consistent with the statutory authority of the agency and with the intention of the General Assembly in the enactment of the statute upon which the regulation is based, the commission shall consider the following in determining whether the regulation is in the public interest:

(1) Economic or fiscal impacts of the regulation, which include the following:

(i) Direct and indirect costs to the Commonwealth, to its political subdivisions and to the private sector.

(ii) Adverse effects on prices of goods and services, productivity or competition.

(iii) The nature of required reports, forms or other paperwork and the estimated cost of their preparation by individuals, businesses and organizations in the public and private sectors.

(iv) The nature and estimated cost of legal, consulting or accounting services which the public or private sector may incur.

(v) The impact on the public interest of exempting or setting lesser standards of compliance for individuals or small businesses when it is lawful, desirable and feasible to do so.

(2) The protection of the public health, safety and welfare and the effect on this Commonwealth's natural resources.

(3) The clarity, feasibility and reasonableness of the regulation to be determined by considering the following:

(i) Possible conflict with or duplication of statutes or existing regulations.

(ii) Clarity and lack of ambiguity.

(iii) Need for the regulation.

(iv) Reasonableness of requirements, implementation procedures and timetables for compliance by the public and private sectors.

(v) Whether acceptable data is the basis of the regulation.

(4) Whether the regulation represents a policy decision of such a substantial nature that it requires legislative review.

(5) Comments, objections or recommendations of a committee.

(6) Compliance with the provisions of this act or the regulations of the commission in promulgating the regulation.

(7) Whether the regulation is supported by acceptable data.

(8) Whether a less costly or less intrusive alternative method of achieving the goal of the regulation has been considered for regulations impacting small business. ((8) added June 29, 2012, P.L.657, No.76)

(5.2 amended July 7, 2011, P.L.277, No.60)

**Compiler's Note:** Section 5 of Act 148 of 2002, which added section 5.2, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

Section 6. Procedures for disapproval of final-form and final-omitted regulations; emergency-certified regulations.

(a) If the commission disapproves a final-form or final-omitted regulation, the commission shall deliver its disapproval order to the Legislative Reference Bureau, the committees and the agency. The commission shall notify commentators who have requested additional information under section 5.1(a) of the commission's vote to disapprove. The disapproval order shall specify the regulatory review criteria which the final-form or final-omitted regulation has not met. The agency shall review the commission's order and proceed pursuant to section 7(a).

(b) The commission's order disapproving a final-form or final-omitted regulation shall bar the agency from promulgating that regulation pending subsequent review under section 7.

(c) ((c) deleted by amendment)

(d) The commission may not issue an order barring an agency from promulgating a final-form or final-omitted regulation if the Attorney General certifies that the final-form or final-omitted regulation is required pursuant to the decree of any court or to implement the provisions of a statute of the United States or regulations issued thereunder by a Federal agency or if the Governor certifies that the final-form or final-omitted regulation is required to meet an

emergency which includes conditions which may threaten the public health, safety or welfare; cause a budget deficit; or create the need for supplemental or deficiency appropriations of greater than \$1,000,000. In those cases, the final-form or final-omitted regulation may take effect on the date of publication or on a later date specified in the order adopting the final-form or final-omitted regulation. The commission and the committees shall review the final-form or final-omitted regulation pursuant to the procedures provided for in this act. If the final-form or final-omitted regulation is disapproved pursuant to those procedures, that regulation shall be rescinded after 120 days or upon final disapproval, whichever occurs later.

(6 amended Dec. 6, 2002, P.L.1227, No.148)

**Compiler's Note:** Section 5 of Act 148 of 2002, which amended section 6, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

Section 6.1. Agency action pursuant to statute. (6.1 deleted by amendment June 25, 1997, P.L.252, No.24).

Section 7. Procedures for subsequent review of disapproved final-form or final-omitted regulations.

(a) An agency may select one of the following options for proceeding with a regulation which has been disapproved by the commission:

- (1) To proceed further with the final-form or final-omitted regulation pursuant to subsection (b).
- (2) To proceed further with the final-form or final-omitted regulation pursuant to subsection (c).
- (3) To withdraw the final-form or final-omitted regulation.

(a.1) ((a.1) deleted by amendment)

(b) If the agency decides to adopt the final-form or final-omitted regulation without revisions or further modifications, the agency shall submit a report to the committees and the commission within 40 days of the agency's receipt of the commission's disapproval order. The agency's report shall contain the final-form or final-omitted regulation, the commission's disapproval order and the agency's response and recommendations regarding the final-form or final-omitted regulation. If the committees are prevented from receiving the report because of adjournment sine die or expiration of the legislative session in an even-numbered year, the agency shall submit its report to the commission and the committees on the fourth Monday in January of the next year. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the report to the committees and the commission until both committees are designated, but the agency shall deliver its report to the commission and the committees no later than the second

Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the agency does not deliver the report to the committees and the commission in the time prescribed in this subsection, the agency shall be deemed to have withdrawn the final-form or final-omitted regulation.

(c) If the agency decides to revise or modify the final-form or final-omitted regulation in order to respond to objections raised by the commission and adopt that regulation with revisions or modifications, the agency shall submit a report to the committees and the commission within 40 days of the agency's receipt of the commission's disapproval order. The agency's report shall contain the revised final-form or final-omitted regulation, the findings of the commission, and the agency's response and recommendations regarding the revised final-form or final-omitted regulation. If the committees are prevented from receiving the report because of adjournment sine die or expiration of the legislative session in an even-numbered year, the agency shall submit the report to the commission and the committees on the fourth Monday in January of the next year. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the report to the committees and the commission until both committees are designated, but the agency shall deliver its report to the commission and the committees no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the agency does not deliver its report to the commission and the committees in the time prescribed in this subsection, the agency shall be deemed to have withdrawn the final-form or final-omitted regulation.

(c.1) The commission may have until its next scheduled meeting, which occurs no less than 15 days from receipt of the agency's report to approve or disapprove the agency's report. The commission shall deliver its approval or disapproval order to the committees for consideration by the General Assembly pursuant to subsection (d). If the commission is prevented from delivering its order to the committees within the time period provided for in this subsection because of the adjournment sine die or expiration of the legislative session in an even-numbered year, the commission shall deliver its order on the fourth Monday of January of the next year. If either committee has not been designated by the fourth Monday in January, the commission may not deliver its order to the committees until both committees are designated, but the commission shall deliver its order no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the commission does not deliver its order disapproving the agency's report and revised final-form or final-omitted regulation in the time prescribed by this subsection, the commission shall be deemed to have approved the agency's report and the revised final-form or final-omitted regulation.

(d) Upon receipt of the commission's order pursuant to subsection (c.1) or at the expiration of the commission's review period if the commission does not act on the regulation or does not deliver its order pursuant to subsection (c.1), one or both of the committees may, within 14 calendar days, report to the House of Representatives or Senate a concurrent resolution and notify the agency. During the 14-calendar-day period, the agency may not promulgate the final-form or final-omitted regulation. If, by the expiration of the 14-calendar-day period, neither committee reports a concurrent resolution, the committees shall be deemed to have approved the final-form or final-omitted regulation, and the agency may promulgate that regulation. If either committee reports a concurrent resolution before the expiration of the 14-day period, the Senate and the

House of Representatives shall each have 30 calendar days or ten legislative days, whichever is longer, from the date on which the concurrent resolution has been reported, to adopt the concurrent resolution. If the General Assembly adopts the concurrent resolution by majority vote in both the Senate and the House of Representatives, the concurrent resolution shall be presented to the Governor in accordance with section 9 of Article III of the Constitution of Pennsylvania. If the Governor does not return the concurrent resolution to the General Assembly within ten calendar days after it is presented, the Governor shall be deemed to have approved the concurrent resolution. If the Governor vetoes the concurrent resolution, the General Assembly may override that veto by a two-thirds vote in each house. The Senate and the House of Representatives shall each have 30 calendar days or ten legislative days, whichever is longer, to override the veto. If the General Assembly does not adopt the concurrent resolution or override the veto in the time prescribed in this subsection, it shall be deemed to have approved the final-form or final-omitted regulation. Notice as to any final disposition of a concurrent resolution considered in accordance with this section shall be published in the Pennsylvania Bulletin. The bar on promulgation of the final-form or final-omitted regulation shall continue until that regulation has been approved or deemed approved in accordance with this subsection. If the General Assembly adopts the concurrent resolution and the Governor approves or is deemed to have approved the concurrent resolution or if the General Assembly overrides the Governor's veto of the concurrent resolution, the agency shall be barred from promulgating the final-form or final-omitted regulation. If the General Assembly does not adopt the concurrent resolution or if the Governor vetoes the concurrent resolution and the General Assembly does not override the Governor's veto, the agency may promulgate the final-form or final-omitted regulation. The General Assembly may, at its discretion, adopt a concurrent resolution disapproving the final-form or final-omitted regulation to indicate the intent of the General Assembly but permit the agency to promulgate that regulation.

(7 amended Dec. 6, 2002, P.L.1227, No.148)

**Compiler's Note:** Section 5 of Act 148 of 2002, which amended section 7, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

Section 7.1. Classification of documents.

If the commission or a committee finds that a published or unpublished document should be promulgated as a regulation, the commission or committee may present the matter to the Joint Committee on Documents. The Joint Committee on Documents shall determine whether the document should be promulgated as a regulation and may order an agency either to promulgate the document as a regulation within 180 days or to desist from the use of the document in the business of the agency.

(7.1 amended June 25, 1997, P.L.252, No.24)

Section 8. Changes in final-form and final-omitted regulations.



(a) Except as provided in subsection (b), an agency may not make changes to a final-form or final-omitted regulation after that regulation has been approved or has been deemed approved by the committees or the commission pursuant to this act.

(b) Subsection (a) does not apply to changes made at the direction of the Office of Attorney General pursuant to its review under section 204(b) of the Commonwealth Attorneys Act.

(8 amended June 25, 1997, P.L.252, No.24)

#### Section 8.1. Existing regulations.

The commission, on its motion or at the request of any person or member of the General Assembly, may review any existing regulation which has been in effect for at least three years. If a committee of the Senate or the House of Representatives requests a review of an existing regulation, the commission shall perform the review and shall assign it high priority. The commission may submit recommendations to an agency recommending changes in existing regulations if it finds the existing regulations to be contrary to the public interest under the criteria established in section 5.2. The commission may also make recommendations to the General Assembly and the Governor for statutory changes if the commission finds that any existing regulation may be contrary to the public interest.

(8.1 amended Dec. 6, 2002, P.L.1227, No.148)

#### Section 9. Commission staff.

(a) The commission shall appoint and fix the compensation of a full-time executive director, who shall be responsible for the general supervision of all the affairs of the commission and for performing any administrative function or duty which the commission may delegate to the executive director. The commission shall appoint and fix the compensation of such other employees as the commission may find necessary for the proper operation of the commission.

(b) The commission shall appoint and fix the compensation of a full-time chief counsel, who shall not be subject to the supervision of the Attorney General or the General Counsel. The chief counsel shall supervise, coordinate and administer the legal services provided to the commission.

(9 amended June 25, 1997, P.L.252, No.24)

#### Section 10. Subpoena power.

The commission has the authority to issue subpoenas for the purpose of requiring the attendance of persons and the production of documents relating to any function which the commission or its staff is authorized to perform pursuant to this act. The chairperson or the executive director may sign a subpoena. The subpoena may be served in any manner authorized under the laws of this Commonwealth. The commission is authorized to apply to the Commonwealth Court to enforce its subpoenas.

(10 amended June 25, 1997, P.L.252, No.24)

#### Section 11. Regulations; annual reports; hearings and advisory group meetings.

(a) The commission, in the performance of its functions under this act, has the power to promulgate and enforce regulations necessary to carry out the purposes of this act. Regulations must be promulgated in accordance with the procedures established in the Commonwealth Documents Law. The regulations shall provide for the commission's notification of filings of final-form and final-omitted regulations to parties likely to be affected by the final-form and final-omitted regulations through publication of a notice in the Pennsylvania Bulletin. Prior to the regulations taking effect, the requirements of this act must be satisfied. For the purposes of reviewing the regulations of the commission and otherwise satisfying the requirements of this act, the Joint Committee on Documents shall exercise the rights and perform the functions of the commission, and the commission shall exercise the rights and perform the functions of an agency under this act.

(b) On or before April 1, the commission shall file an annual report of its activities for the prior calendar year with the Governor and the General Assembly.

(c) The commission may hold public hearings on any matter before the commission and may meet with advisory groups regarding matters before the commission.

(11 amended June 25, 1997, P.L.252, No.24)

#### Section 12. Clearinghouse.

The commission shall act as a clearinghouse for complaints, comments and other input from members of the General Assembly and from the public regarding existing, proposed, final-form and final-omitted regulations. The commission shall maintain accurate records regarding complaints and comments it receives and shall maintain such records by departmental and subject matter categories for four years after the date of receipt by the commission. When the commission files its annual report as provided by section 11, the commission shall include within it a summary of public complaint and comment along with any recommendations the commission may offer for statutory change.

(12 amended June 25, 1997, P.L.252, No.24)

#### Section 12.1. Gubernatorial review.

The Governor may institute procedures for the review and approval of regulations promulgated by executive agencies prior to their submittal for review under this act, including, but not limited to, the establishment of a task force or committee, by executive order. The Governor may also establish procedures for the effective coordination of the review of regulations under the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," and sections 612 and 2203-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

Section 13. Appropriation. (Deleted by amendment Feb. 21, 1986, P.L.47, No.16)

Section 14. Repeals.

(a) The following acts or parts of acts are repealed absolutely:

Section 812.2, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

Second, third and fourth sentences of subsection (n) of section 4, act of May 23, 1945 (P.L.913, No.367), known as the "Professional Engineers Registration Law."

Second and third sentences of section 1410, act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code."

Subsection (c) of section 11, act of November 30, 1976 (P.L.1207, No.265), known as the "Emergency Medical Services Systems Act."

Subsections (c) and (d) of section 224, act of July 1, 1978 (P.L.700, No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act."

Subsections (c) and (d) of section 601, act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act."

Third and fourth sentences of subsection (a) and subsection (b) of section 404, act of February 19, 1980 (P.L.15, No.9), known as the "Real Estate Licensing and Registration Act."

Section 107, act of July 7, 1980 (P.L.380, No.97), known as the "Solid Waste Management Act."

Section 6103(b) of Title 75 of the Pennsylvania Consolidated Statutes (relating to promulgation of rules and regulations by department).

(b) All other acts or parts of acts are repealed insofar as they provide for consideration by the General Assembly or its committees of proposed regulations.

Section 15. Termination date (15 deleted by amendment June 25, 1997, P.L.252, No.24)

**Protocol for Presentation of  
Regulations Under the Regulatory Review Act**

**Adopted by the EQB on October 24, 1984 and  
Amended by the EQB on May 19, 1993, and December 15, 2009**

**A. General**

1. Proceedings in matters concerning regulations that are reviewed and adopted by the Environmental Quality Board (EQB) shall be conducted in a manner that minimizes unnecessary delays and recognizes informal, good-faith negotiations by the EQB Chairperson and that individual's designee, pursuant to the requirements of the Regulatory Review Act (Act).

**B. Responsibilities of the EQB Chairperson**

1. The Chairperson of the EQB or that individual's designee shall represent the EQB in proceedings conducted pursuant to the Act, including before the Independent Regulatory Review Commission (IRRC).
2. Acting pursuant to the guidelines in this protocol, the Chairperson of the EQB or that individual's designee shall accurately and faithfully present the rationale, policy considerations and justification for any regulation authorized by the EQB.
3. Within five days of the Department's receipt of a notice of disapproval of a regulation from IRRC, the Chairperson of the EQB or that individual's designee shall schedule a meeting of the EQB to consider the Department's recommended response to the IRRC disapproval order. At this meeting, which may be a regularly scheduled meeting or a special meeting of the EQB called by the Chairperson of the EQB or that individual's designee, the EQB may take any of the following actions that it deems appropriate in response to the IRRC disapproval:
  - a. notify the Governor, the designated Standing Committees of the House of Representatives and the Senate (Standing Committees), and IRRC that the regulation is withdrawn, pursuant to Section 7(a) of the Act.
  - b. notify the Governor, the designated Standing Committees and IRRC that the regulation will be submitted without revisions within 40 days of the Department's receipt of the IRRC disapproval order, pursuant to Section 7 (b) of the Act.; or

- c. notify the designated Standing Committees and IRRC that the regulation will be submitted with further revisions within 40 days of the Department's receipt of the IRRC disapproval order, pursuant to Section 7 (c) of the Act.
4. Within five days of the Department's receipt of a notice of disapproval from either or both designated Standing Committees, the Chairperson of the EQB or that individual's designee shall notify the EQB of such disapproval and, upon approval of the Board at its next scheduled meeting, withdraw a regulation from consideration by the designated Standing Committees and IRRC, when deemed necessary.
5. Following the Department's assessment of any interceding actions that affect the need for and the promulgation of a rulemaking such as the passage of a new state law or a change in federal law or regulation, the Chairperson of the EQB or that individual's designee may notify IRRC and the designated Standing Committees that the regulation is withdrawn. Notice of the EQB Chairperson's action will be shared with the Board within 5 days from the time notification was sent to IRRC and the Standing Committees. The action by the Chairperson of the EQB or that individual's designee will not prejudice the Board from resubmitting the rulemaking to IRRC and the Standing Committees at a later time, if directed by the Board at a subsequent meeting.
6. The Chairperson of the EQB or that individual's designee shall prepare and submit such reports or other materials that are needed to comply with the procedures contained in the Act.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
POLICY OFFICE**

**DOCUMENT NUMBER:** 012-1920-001

**TITLE:** Public Participation in the Development of Regulations and  
Technical Guidance

**AUTHORITY:** Regulatory Review Act of 1989

**POLICY:** The Department will ensure that all guidance documents and  
regulations are developed with effective participation by the  
public during all steps in the process.

**PURPOSE:** The purpose of these guidelines is to improve public access to  
information and decision-making in the Department.

**APPLICABILITY:** These guidelines are applicable to all technical guidance  
documents and regulations.

**PAGE LENGTH:** 8

## I. BACKGROUND

Public participation is an integral part to the development of both regulations and technical guidance. The Department recognizes that no one person or group speaks for the public. As a result, the Department must reach out to broaden public participation to understand what the public thinks, to better inform the Department, and to ensure that the public understands what the Department is doing and why it is doing it.

## II. GENERAL POLICY

All regulations and technical guidance documents will be developed with effective involvement from the public. The term “public” refers to any individual or group who may be affected by DEP activities and indicates an interest in participating. This term includes but is not limited to citizens, interest groups, local governments and business and industry associations.

To be effective, the following principles should be followed:

1. **Public involvement in the process must occur early and often.** Public participation takes more time and effort up front, but will result in a better decision which is less controversial and requires less outreach, education and defense.
2. **Public trust is earned through openness, outreach, consistency and results.** Public involvement is integral to sound decision-making. Public participation allows the Department to tap a much broader range of expertise than it has available in-house.
3. **Public dialog will increase understanding among all interests affected by environmental decisions.** Public dialog can aid both the regulated community and the public in understanding their individual expectations, resulting in more workable and widely-acceptable solutions.
4. **Public input should be solicited from all sectors of society.** Equal opportunity for comment and equal consideration of comments from the private and public sectors should be provided. All members of the public should have equitable opportunities to participate. The Department will encourage broad participation in its decision-making from all members of the public, as defined in Section I. In addition, the Department will comply with the Americans with Disabilities Act in soliciting comments and holding public meetings.

5. **The public deserves substantive responses to all comments they submit.** The Department should carefully consider all public comments, regardless of their origin, and provide a response through a comment and response document, not just an acknowledgment.
6. **Freedom to Participate.** The Department will encourage broad participation in its decision-making and discourage actions which prevent effective participation. DEP will encourage participation by targeting specific audiences who may have a particular interest in a proposal, widely distributing information on proposals, and proactively asking for comments on specific issues of concern. Disruptive actions by interest groups which hinder others from participating in discussions and meetings with the Department will be discouraged.

Effective participation also means two-way communication and the willingness of the public to take advantage of the various opportunities to participate. To encourage public participation in the development of regulations and technical guidance documents, the Department will use various methods of obtaining input. These methods are designed to provide the public with the information needed on how and when to get involved in developing regulations and technical guidance documents to impact effectively on environmental issues and decision-making.

### **III. METHODS OF OBTAINING PUBLIC INPUT**

To participate effectively in the development of regulations and policies, the public must be informed of how and when they can get involved. The Department must notify both the regulated community and the general public and ask for input in the development of regulatory alternatives. There are several methods for obtaining public input. The Department will use the most effective method, or combination of methods, on a case-by-case basis. What works in one area may not work in another.

#### **1. Use of Advisory Committees**

The Department will use its advisory committees in the development of regulations and technical guidance documents and in the review of public comments. The Department will provide timely briefings and consult with the appropriate advisory committee on regulations prior to Environmental Quality Board (EQB) consideration. For proposed regulations, the Department will consult with the appropriate advisory committees early in the drafting stage of proposed regulations. Advisory committee members will be provided with a copy of a draft regulation in advance of an advisory committee meeting to provide members with adequate time to review the proposal. Advisory committees may also recommend that the Department use the Advance Notice of Proposed Rulemaking procedure. For final



regulations, the Department will report to the appropriate advisory committees on the extent and nature of comments by reviewing the major public comments submitted during the public comment period and providing the Department's response to those comments. The Department will also involve the advisory committees in decisions to use the Advance Notice of Final Rulemaking procedure. In addition, advisory committees may also make recommendations to the Department to initiate rulemakings.

The Department will notify the EQB of the involvement of the advisory committee in the executive summary and preamble of the regulatory package. The executive summary will explain how the advisory committee was involved in the development of the regulation by providing the advisory committee meeting date or dates when the regulation was discussed and a brief summary of the advisory committee's comments or actions regarding the rule. If appropriate, the Department will provide the EQB with the advisory committee's report or meeting minutes related to its review of the regulation.

## **2. Use of the Advance Notice of Proposed Rulemaking Procedure**

The Advance Notice of Proposed Rulemaking procedure enables the Department to solicit comments on draft regulations prior to action by the Board. This procedure precedes the proposed rulemaking process and involves publishing a notice in the *Pennsylvania Bulletin* and posting a notice on the Public Participation Center of the Department's website ([www.depweb.state.pa.us](http://www.depweb.state.pa.us)) that the Department is soliciting comments on draft regulations. In addition, the Department will solicit comments through the appropriate advisory committee and through the various forums listed under "Availability of Documents."

Comments submitted to the Department on draft regulations as a result of an Advance Notice of Proposed Rulemaking will be summarized by the Department in the preamble and discussed with the appropriate advisory committee. The preamble is submitted to the EQB as part of the proposed rulemaking package. The proposed rulemaking, which will discuss the comments received during the Advance Notice of Proposed Rulemaking phase, will be available to the public two weeks prior to the EQB meeting at which time the proposed rulemaking will be considered by the EQB.

Use of this procedure will provide the public with an additional opportunity to comment on a proposed regulation, thereby developing a regulation with greater input from the public and those we regulate.

## **3. Use of the Notice of Proposed Rulemaking Procedure**

The Department will solicit comments on proposed regulations through the notice of proposed rulemaking in the *Pennsylvania Bulletin* and through posting of a notice on the Public Participation Center on the Department's website ([www.depweb.state.pa.us](http://www.depweb.state.pa.us)). The Department will also notify the public of such proposals and solicit comments through public meetings and through the forums listed under "Availability of Documents." The Department will consider all public comments received and will prepare a substantive response. The Department will solicit comments from the appropriate advisory committee on the proposed rulemaking and on the draft comment and response

document. The comment and response document will be forwarded to those individuals who commented on the proposed rulemaking.

#### **4. Use of the Advance Notice of Final Rulemaking Procedure**

The Advance Notice of Final Rulemaking procedure will provide an additional opportunity for the public to see changes that were made to a proposed regulation and to comment on these changes. This procedure precedes the final rulemaking process and involves publishing a notice in the *Pennsylvania Bulletin*, and posting a notice on the Public Participation Center of the Department's website ([www.depweb.state.pa.us](http://www.depweb.state.pa.us)) that the Department is soliciting comments on a draft final regulation. Individuals who submitted comments on the proposed regulation during the official public comment period will also be provided with this notice. Interested parties may contact the Department for a copy of the draft final regulation and submit comments on the changes from the proposed regulations. The Department will also solicit comments through the forums listed under "Availability of Documents."

Comments submitted to the Department on changes from proposed rulemaking as a result of an Advance Notice of Final Rulemaking will be discussed with the appropriate advisory committee and will be summarized and responded to by the Department in both the order and to the final rulemaking and in a separate comment and response document. These documents will be mailed to the EQB with the final rulemaking at least two weeks prior to the EQB meeting.

The Department may use this procedure in instances where a proposed rulemaking generated significant public interest, where there was substantial confusion about the intent of the rulemaking, where the nature of the changes were such that additional public review was warranted, or when requested by an advisory committee or the EQB. This procedure will not be applicable to regulations with statutorily mandated deadlines, where these additional public comment periods would result in missing such deadlines.

#### **5. Public Information Meetings**

The Department will hold a public information meeting or meetings on a proposed regulation or technical guidance document when it anticipates a need to inform the public on environmental issues or explain a new proposal and respond to questions. The Department would chair these public meetings, explain the regulation or technical guidance document, and respond to questions. Public meetings are publicized using the forums listed under "Availability of Documents."

#### **6. Public Hearings**

Public hearings may be conducted by the EQB for the purpose of accepting comments on a proposed rulemaking, particularly when significant interest is generated by a proposal. An official record of the hearing is prepared by an independent court reporter. Public hearings are scheduled at locations in the state which may be most affected by a proposed rulemaking. For example, public hearings are scheduled in the watershed affected by a

proposed stream redesignation. Public hearings are publicized using the forums listed under “Availability of Documents.”

## **7. Six-Month Regulatory Agenda**

Every six months, the Department will publish a list and summary of regulations which will be submitted to an advisory committee for review, proposed for consideration by the EQB, or published in the *Pennsylvania Bulletin*. This regulatory agenda will provide an early notice to the public of the Department’s plans for adopting new regulations. The six-month agenda will be published in the *Pennsylvania Bulletin* in early February and July.

## **IV. PUBLIC COMMENT PERIOD**

All proposed rulemakings are subject to a public comment period of at least 30 days. The public comment period begins on the date of publication in the *Pennsylvania Bulletin*. The public comment period ends on the deadline date specified in the “Public Comment” section of the preamble. Some proposals require longer comment periods by virtue of a statutory mandate. The EQB or the Department may authorize a longer comment period on particularly complex rulemakings or those that generate significant public interest.

All comments received by the public during the public comment period are included in the official public comment record. Copies of the public comments are forwarded by the Department to the Senate and House Environmental Resources and Energy Committees and to the Independent Regulatory Review Commission. The official public comment record for all rulemakings is maintained by the Policy Office and is available for public review.

## **V. CONSIDERATION OF PUBLIC COMMENTS**

The Department will prepare a Comment and Response Document for all proposed rulemakings. This document will provide a thorough response to all comments submitted during the public comment period. This document will also address any comments submitted by the Standing Committees and the Independent Regulatory Review Commission. The Department will discuss these comments with the appropriate advisory committee. The comment and response document will be included in the final rulemaking package and will be made available to those individuals who submitted public comments.

## **VI. AVAILABILITY OF DOCUMENTS**

Open public access to existing information, including policies, procedures, and data, and early notice and outreach on upcoming decisions is important in building trust between the Department and the public. To meet this goal, the Department shall make technical guidance documents and regulations accessible to the public through the following means:

- 1. Electronic Access** – Through the Public Participation Center of the Department’s website, all regulations and technical guidance documents will be made available to the public.

2. **Local newspaper notices** of public meetings and hearings will be published.
3. **Other Methods of Public Notification** – To reach out to the interested parties, the Department will also use the following communication networks: roundtables, interest groups, business groups, government associations, mailing lists of individuals and groups interested in specific subjects, and general outreach through the media, including the use of cable-TV notices.
4. **Electronic Notification** – The Department will provide RSS Feed Server subscribers with updates on draft technical documents and regulatory proposals throughout the review process. Instructions for subscribing to the feed are available on the Public Participation Center of the Department’s website.
5. **General Information** is available through DEP, P.O. Box 2063, Harrisburg, PA 17105-2063, 717-783-8727; fax: 717-783-8926.

**CHAPTER 23. ENVIRONMENTAL QUALITY BOARD POLICY FOR  
PROCESSING PETITIONS – STATEMENT OF POLICY**

Sec.	
23.1	Petitions
23.2	Departmental review
23.3	Notification
23.4	Oral presentation
23.5	Board determination
23.6	Notice of acceptance and Department report
23.7	Response to report
23.8	Board consideration

**§ 23.1. Petitions.**

- (a) Petitions shall be submitted on forms supplied by the Department to the Secretary of the Department of Environmental Protection, Rachel Carson State Office Building, Post Office Box 2063, Harrisburg, Pennsylvania 17105-2063, and shall contain the following information:
- (1) The petitioner's name, address and telephone number.
  - (2) A description of the action requested in the petition and one of the following:
    - (i) Suggested regulatory language if the petition requests that the EQB adopt or amend regulations.
    - (ii) A specific citation to the regulations to be repealed if the petition requests that the EQB repeal existing regulations.
  - (3) The reason the petitioner is requesting this action from the EQB, including factual and legal contentions as well as supporting documentation which establish the petitioner's justification for the requested action by the EQB.
  - (4) The types of persons, businesses and organizations likely to be impacted by this proposal.
  - (5) For petitions for redesignation of streams under Chapter 93 (relating to water quality standards) and the Clean Streams Law (35 P.S. §§ 691.1-691.1001), the petition shall include the following information to satisfy paragraph (3):
    - (i) A clear delineation of the watershed or stream segment to be redesignated, both in narrative form and on a map.
    - (ii) The current designated use(s) of the watershed or segment.

- (iii) The requested designated use(s) of the watershed or segment.
  - (iv) Available technical data on instream conditions for the following: water chemistry, the aquatic community (benthic macroinvertebrates and/or fishes), or instream habitat. If such data are not included, provide a description of the data sources investigated.
  - (v) A description of existing and proposed point and nonpoint source discharges and their impact on water quality or the aquatic community, or both. The names, locations, and permit numbers of point source discharges and a description of the types and locations of nonpoint source discharges should be listed.
  - (vi) Information regarding any of the qualifiers for designation as High Quality Waters (HQ) or Exceptional Value Waters (EV) in § 93.4b (relating to qualifying as high quality or exceptional value waters) used as a basis for the requested designation.
  - (vii) A general description of land use and development patterns in the watershed. Examples include the amount or percentage of public lands (including ownership) and the amount or percentage of various land use types (such as residential, commercial, industrial, agricultural, and the like).
  - (viii) The names of all municipalities through which the watershed or segment flows, including an official contact name and address.
  - (ix) Locational information relevant to subparagraphs (iv)-(viii) (except for contact names and addresses) displayed on maps, if possible.
- (b) The general procedures in this chapter apply to petitions unless the EQB adopts specific procedures for a particular type of petition. Special procedures have been adopted for petitions requesting that the EQB designate an area as unsuitable for mining activity. These petitions are reviewed under Chapter 86 (relating to surface and underground coal mining: general).

### **§ 23.2. Departmental review.**

The Department will examine the petition to determine if it meets the following conditions:

- (1) The petition is complete as required by § 23.1 (relating to petitions).

- (2) The petition requests an action that can be taken by the EQB.
- (3) The requested action does not conflict with Federal law.

### **§ 23.3. Notification.**

The Department will notify the EQB and petitioner of its determination within 30 days of receipt of the petition. If the Department determines that the petition is not appropriate for submittal to the EQB because it does not meet each of the conditions in § 23.2 (relating to Departmental review), the Department's notification shall state the reasons for its determination and give the petitioner 30 days to complete the petition or modify the request.

### **§ 23.4. Oral presentation.**

At the next EQB meeting occurring at least 15 days after the Department's determination that a petition is appropriate for consideration by the EQB, the Chairperson of the EQB shall inform the EQB of the petition for rulemaking, the nature of the request and the petitioner. The Chairperson shall give the petitioner or the petitioner's representative the opportunity to make a 5-minute oral presentation on why the EQB should accept the petition. The Department will also make a recommendation on whether the EQB should accept the petition.

### **§ 23.5. Board determination.**

The EQB may refuse to accept a petition if it determines that one or more of the following conditions exist:

- (1) The EQB has within the previous 2 years considered the issue addressed by the petition for rulemaking as part of an earlier decision concerning the adoption, amendment or deletion of a regulation.
- (2) The action requested by the petitioner concerns a matter currently in litigation.
- (3) The requested action is not appropriate for rulemaking by the EQB due to policy or regulatory considerations.
- (4) The petition involves an issue previously considered by the EQB, and it does not contain information that is new or sufficiently different to warrant reconsideration of that decision. If a petition does present new or sufficiently different information, this information must have been either unavailable at the time of the EQB's previous decision or not contained in the record of the proceeding in which the previous decision was made.

### **§ 23.6. Notice of acceptance and Department report.**

If the EQB accepts the petition, a notice of acceptance will be published in the *Pennsylvania Bulletin* within 30 days. In addition, a report will be prepared in accordance with one of the following procedures:

- (1) *Petitions other than stream redesignation petitions.* The Department will prepare a report evaluating the petition within 60 days. If the report cannot be completed within the 60-day period, at the next EQB meeting the Department will state how much additional time is necessary to complete the report. The Department's report will include a recommendation on whether the EQB should approve the action requested in the petition. If the recommendation is to change a regulation, the report will also specify the anticipated date that the EQB will consider a proposed rulemaking.
- (2) *Stream redesignation petitions.* The Department will publish notice of its intent to assess the waters subject to evaluation. The notice will include a request for submittal of technical data that interested persons have. Following the assessment and review of all technical data, the Department will prepare a draft evaluation report.

**§ 23.7. Response to report.**

Upon completing the report, the Department will send a copy of the report to the petitioner. Within 30 days of the mailing of the report, the petitioner may submit to the Department a written response to the report.

**§ 23.8. Board consideration.**

The Department will prepare a recommendation to the EQB based on the report and comments received from the petitioner. If regulatory amendments are recommended, the Department will develop a proposed rulemaking for EQB consideration within 6 months after the Department mailed its report to the petitioner. If regulatory amendments are not recommended, the Department will present its recommendation and basis to the EQB at the first meeting occurring at least 45 days after the Department mailed its report to the petitioner.



**INDEPENDENT REGULATORY REVIEW COMMISSION**

The Independent Regulatory Review Commission (IRRC) reviews proposed and final regulations from Pennsylvania state agencies for consistency with the criteria contained in the Regulatory Review Act, except regulations from the Senate, House of Representatives, the Pennsylvania Fish and Boat Commission, the Pennsylvania Game Commission, or any court or political subdivision. The criteria includes the statutory authority for the agency to promulgate the regulation, consistency with the statute which the regulation implements, the economic and fiscal impact of the regulation, and the reasonableness of the regulation.

There are typically five (currently four) members of the Commission, each of whom is appointed by a different appointing authority. The appointing authorities are the Governor, the President Pro Tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives and the Minority Leader of the House. A commissioner may not be a Commonwealth employee or hold an elected or appointed position in Pennsylvania Government.

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